

**MEMO# 28616**

December 22, 2014

# **Draft Comment Letter on CFTC Proposal to Amend Recordkeeping Requirements for DCM and SEF Members; Your Comments Requested by January 7**

[28616]

December 22, 2014

TO:

DERIVATIVES MARKETS ADVISORY COMMITTEE No. 91-14  
REGISTERED FUND CPO ADVISORY COMMITTEE

RE:

DRAFT COMMENT LETTER ON CFTC PROPOSAL TO AMEND RECORDKEEPING REQUIREMENTS FOR DCM AND SEF MEMBERS; YOUR COMMENTS REQUESTED BY JANUARY 7

The Commodity Futures Trading Commission (“CFTC”) recently proposed amendments to Regulation 1.35(a) under the Commodity Exchange Act, which addresses recordkeeping requirements applicable to certain market participants, including a member of a designated contract market (“DCM”) or a swap execution facility (“SEF”), with respect to transactions relating to their business of dealing in commodity interests. [\[1\]](#) Comments on the Proposed Amendments are due January 13, 2015. ICI has drafted the attached comment letter, summarized below, in response to the Proposed Amendments. **Please send your comments, in writing, no later than Wednesday, January 7 to [sarah.bessin@ici.org](mailto:sarah.bessin@ici.org).**

ICI’s draft comment letter supports the provisions of the Proposed Amendments that would expand and make permanent the temporary no-action relief that the CFTC staff has granted to commodity trading advisors (“CTAs”) that are members of a DCM or SEF to exclude them from the requirement to record all oral communications with customers that lead to the execution of a transaction in a commodity interest. We recommend, however, that the Proposed Amendments further exclude operators of registered investment companies (“registered funds”) that are registered CTAs and/or commodity pool operators (“CPOs”) that are DCM or SEF members from the requirements of Regulation 1.35 pertaining to written records. The recommendation in the letter is based upon the fact that CPOs and

CTAs to registered funds, and the funds they manage, are subject to comprehensive recordkeeping requirements under Securities and Exchange Commission (“SEC”) regulations. These SEC recordkeeping requirements are analogous to those that would apply to registered fund CPOs and CTAs under Regulation 1.35. As a condition to relief from the written records requirement of Regulation 1.35, the letter explains that the CFTC could require that registered fund CPOs and CTAs provide the CFTC with the same access to their SEC-required records as is required under SEC regulations. Such an approach would meet the CFTC’s regulatory need for records from registered fund CPOs and CTAs, while avoiding subjecting these entities to overlapping and costly recordkeeping requirements, which costs would ultimately be borne by fund shareholders. The letter includes an appendix comparing the books and records that registered funds and their advisers and sub-advisers are required to maintain under SEC regulations, with those required under Regulation 1.35.

Sarah A. Bessin  
Senior Counsel

[Attachment \(in .pdf format\)](#)

**endnotes**

[1] Records of Commodity Interest and Related Cash or Forward Transactions, 79 Fed. Reg. 68140 (Nov. 14, 2014) (“Proposed Amendments”). For a summary of the Proposed Amendments, please see ICI Memorandum No. 28525 (Nov. 13, 2014), available at [http://www.ici.org/my\\_ici/memorandum/memo28525](http://www.ici.org/my_ici/memorandum/memo28525).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.